

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

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FILED  
2011 JUN -8 PM 3:14

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: WV Health Insurance Plan TITLE NUMBER: 113

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §33-48-7b

AMENDMENT TO AN EXISTING RULE: YES X NO       

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Premium Subsidy

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:       

TITLE OF RULE BEING PROPOSED:       

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 8, 2011 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy Murphy, Associate Counsel

WV Offices of the Insurance Commissioner

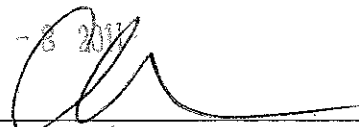
P.O. Box 50540

Charleston, WV 25305-0540

Timothy.Murphy@wvinsurance.gov

THE ISSUES TO BE HEARD SHALL BE  
LIMITED TO THIS PROPOSED RULE.

JUN -8 2011

  
Charles O. Lorensen  
Cabinet Secretary  
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Department of Revenue  
Agency Questionnaire

Re: Legislative Rule to be Filed

TITLE 113, SERIES 1  
PREMIUM SUBSIDY

Question 1: Are regulations required?

Yes, W. Va. Code §33-48-7a provides that *"The board may propose emergency rules and shall propose rules for legislative approval in accordance with [WVC29A-3-1 et seq.] to establish eligibility criteria for enrollees who are eligible for premium subsidy pursuant to this section."*

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

The rule is not controversial.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

Custom drafted.

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Question 4: What are the really important things you think the Secretary of the Department of Revenue should know about this rule and the issues that surround it?

If the federal health insurance reforms are upheld (the Affordable Care Act), AccessWV will expire in 2014 because health insurance companies will no longer be allowed to deny coverage based on a pre-existing condition. AccessWV has built up a surplus of \$13M that it will use to subsidize premiums that will roughly approximate the subsidies to the federal high risk plan. 400% of FPL is also the upper limit of eligibility for federal subsidies under the qualified health plans to be offered through the new exchanges in 2014.

Board of Directors of the West  
Virginia Health Insurance Plan  
Legislative Rule  
Title 113, Series 1

**PREMIUM SUBSIDY**

**TITLE 113, SERIES 1**

**BRIEF SUMMARY OF RULE**

This rule changes the maximum income level for eligibility for the subsidies for the state high risk plan (the WV Health Insurance Plan or "AccessWV"). The current rule sets the maximum at 200% of the federal poverty level, this amendment raises it to 400% to reflect the 2011 statutory change. The amendment also defines "Average annual household income," a term used in the statute, to be the income reported on the applicant's last year's federal tax return plus any unreported income such as child support, etc. of any household member.

Board of Directors of the West  
Virginia Health Insurance Plan  
Legislative Rule  
Title 113, Series 1

**PREMIUM SUBSIDY**

**TITLE 113, SERIES 1**

**STATEMENT OF CIRCUMSTANCES**

In 2009, the Legislature enacted W. Va. Code §33-48-7b that permitted the governing board of the state high risk pool (WV Health Insurance Plan or "AccessWV") to use surpluses in AccessWV's account to subsidize premiums for low income enrollees. The initial version of the implementing legislative rule, 113 CSR 1 (effective April 14, 2010), set the income eligibility level at 200% of federal poverty level (FPL). In 2011, the Legislature enacted HB 2876 that increased the eligibility level to 400% of FPL. This amendment to the implementing rule reflects this change.

APPENDIX B  
**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Premium Subsidy (Title 113, Series 1)

Type of Rule:   X   Legislative        Interpretive        Procedural        Emergency

Agency: West Virginia Health Insurance Plan

Address: Post Office Box 50540  
1124 Smith Street, Greenbrooke Building  
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-6279 x1210 Email: Timothy.Murphy@wvinsurance.gov

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**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure  
will have on costs and revenues of state government.

The rule will have no impact on costs and revenues of state government.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of  
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Equipment	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

Rule Title: Premium Subsidy (Title 113, Series 1)

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

N/A

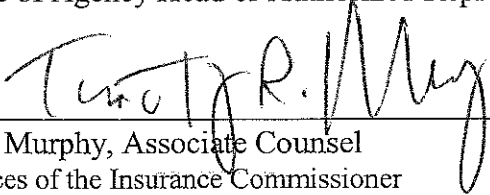
**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The subsidy program has been operating for a year. The statute and corresponding rule only change the eligibility criteria for the subsidy. The funds for the subsidy itself will come from a \$13M surplus that has been accumulated over the past several years from an assessment on hospitals (see WV Code 33-48-7(b)) and which the Plan actuary has determined is sufficient to support the subsidy costs; the Board has voted not to take the assessment for SFY12 (July 1, 2011).

Date: 6-8-11

Signature of Agency Head or Authorized Representative

  
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Timothy Murphy, Associate Counsel  
WV Offices of the Insurance Commissioner  
P. O. Box 50540  
Charleston WV 25305-0540  
Timothy.Murphy@wvinsurance.gov

**TITLE 113  
LEGISLATIVE RULE  
BOARD OF DIRECTORS OF THE  
WEST VIRGINIA HEALTH INSURANCE PLAN**

**SERIES 1  
PREMIUM SUBSIDY**

**Sections**

- 113-1-1. General.
- 113-1-2. Definitions.
- 113-1-3. Determination of Surplus.
- 113-1-4. Eligibility for Premium Subsidy.
- 113-1-5. Delegation of Authority to Plan Administrator.

**TITLE 113**  
**LEGISLATIVE RULE**  
**BOARD OF DIRECTORS OF THE**  
**WEST VIRGINIA HEALTH INSURANCE PLAN**

**SERIES 1**  
**PREMIUM SUBSIDY**

**§113-1-1. General.**

1.1. Scope. -- The purpose of this rule is to establish criteria for certain individuals to obtain a premium subsidy with the West Virginia Health Insurance Plan.

1.2. Authority. -- W. Va. Code §§~~33-2-10~~ and 33-48-7b.

1.3. Filing Date. --

1.4. Effective Date. --

**§113-1-2. Definitions.**

2.1. "Average annual household income" means the Total Income reported on the prior year's federal tax return for all individuals in the applicant's or member's household, plus any other Income received by any household member, including but not limited to non-taxed Social Security income, child support, disability payments, veterans' benefits, and public assistance.

~~2.1.~~ 2.2. "Board" means the Board of Directors of the Plan.

~~2.2.~~ 2.3. "Low-income eligible individuals" means those persons having an annual household income at or below ~~200%~~ 400% of the federal poverty level who are otherwise eligible for coverage under the Plan as provided in W. Va. Code §33-48-4.

~~2.3.~~ 2.4. "Plan" means the West Virginia Health Insurance Plan as created in W. Va. Code §33-48-2.

~~2.4.~~ 2.5. "Plan Administrator" means the administrator of the Plan selected by the Board pursuant to W. Va. Code §33-48-6.

~~2.5.~~ 2.6. "Premium subsidy" means the difference between the amount of periodic payment the Plan Administrator makes to the Plan on behalf of the low-income eligible individual plus the administrative cost to the Plan of providing the Plan to that low-income eligible individual, and the amount determined by the Board to be the low-income eligible individual's premium responsibility.

**Board of Directors of the  
WV Health Insurance Plan  
Legislative Rule  
Title 113, Series 1**

2.6. ~~2.6.~~ 2.7. "Surplus" means funds being held in the West Virginia Health Insurance Plan Fund pursuant to W. Va. Code §33-48-7a that are above those amounts necessary to provide fully for the expected costs of claims and other expenses listed in W. Va. Code §33-48-7(a).

**§113-1-3. Determination of Surplus.**

3.1. The Board shall periodically, but no less than annually, determine if a surplus exists.

3.2. In making a determination concerning the existence of a surplus, the Board may consider an actuarial analysis and any other information developed by or presented to the Board that demonstrates the status of a surplus.

**§113-1-4. Eligibility for Premium Subsidy.**

4.1. In the event the Board determines that a surplus exists, the Board shall create a schedule of premium subsidies that varies with income to assist low income eligible individuals in paying the premium costs of the Plan. The Board may adopt as many income categories within the premium subsidy schedule as it finds necessary and practical.

4.2. For the purposes of determining the eligibility of a person for a premium subsidy, ~~the household income shall be based on the preceding twelve months and~~ the Board may consider information obtained from the ~~West Virginia Department of Health and Human Resources or any other state or federal agency.~~ The eligibility of low income eligible individuals who receive a premium subsidy shall be ~~periodically, but no less than annually,~~ annually reassessed by the Board.

4.3. No person shall be eligible for a premium subsidy if that person's premium is paid by a third party who is not a family member of the person.

4.4. Whenever the Board finds that there is a significant possibility that premium subsidies may result in an over-expenditure of the surplus, the Board may discontinue the use of the surplus to subsidize premiums until the Board determines that the possibility for over-expenditure no longer exists. The Board shall give low income eligible individuals who are receiving a premium subsidy thirty days' notice prior to such a discontinuance.

**§113-1-5. Delegation of Authority to Plan Administrator.**

5.1. The Board may delegate or assign any of its authority or duties set forth in this rule to the Plan Administrator.